

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

MISSION INDEPENDENT PRACTICE
ASSOCIATION MEDICAL GROUP, INC.,

Debtor.

Case No. 99-51705

Chapter 7

MONTEREY COUNTY MEDICAL
SOCIETY,

Plaintiff,

Adversary No. 99-5194

vs.

Memorandum Decision and Order

HEALTH NET,

Defendant.

This matter comes before the Court on the motion of the Monterey County Medical Society (“MCMS”). MCMS filed a lawsuit in the Superior Court for the County of Monterey against, inter alia, Health Net and Mission Independent Practice Association Medical Group, Inc. Health Net removed the lawsuit to this Court pursuant to 28 U.S.C. §§ 1334, 1367(a) and 1452(a) and Federal Rule of Bankruptcy Procedure 9027. MCMS now moves for remand back to the Monterey County Superior Court, asserting not only that this Court should remand under 28 U.S.C. § 1452(b) but that it has the discretion to abstain pursuant to 28 U.S.C. § 1334(c). In the interim, the proceeding has been dismissed as to the debtor, Mission, and the only remaining defendant is Health Net. Having reviewed the papers and pleadings and heard the arguments of counsel, the Court finds that remand is appropriate.

BACKGROUND

Health Net is a health care service plan. By contracting with health care providers, including Mission, it provides health care services to both individuals and groups. Pursuant to their contract, Health Net made monthly capitation payments to Mission and Mission agreed to provide medical services to Health Net's members in the Monterey area. Mission subcontracted its responsibilities under this contract and entered into Participating Physician Agreements with providers who then rendered health care services to Health Net's Monterey enrollees.

These physicians provided health care services, but allegedly have not been paid. According to the remand motion, "Plaintiff estimates that the class physicians are owed over \$1 million for medical services rendered to Health Net enrollees referred to them by Mission."

On December 2, 1998, MCMS filed the instant lawsuit in Monterey County Superior Court. Although the lawsuit was originally filed against numerous defendants, at the time of remand the only remaining defendants were Health Net and Mission. Mission has since been dismissed as a defendant and only Health Net remains.

The complaint states five causes of action against Health Net. Three of these causes of action seek monetary relief under the Physician Agreements through a theory of agency, arguing breach of contract, services rendered and quantum meruit. The other two counts are brought under Health and Safety Code § 1371. This California statute, asserts MCMS, imposes an obligation on Health Net to pay for health care services rendered to its enrollees. Whether MCMS's argument is valid is an issue of first impression, for the relevant portion of this statute has not been interpreted by any California court in a published decision.

DISCUSSION

Remand

According to 28 U.S.C. § 1452(b), "[t]he court to which . . . [a] claim or cause of action is removed may remand such claim or cause of action on any equitable ground." The Court may consider several factors in deciding whether to remand this lawsuit to the Monterey County Superior Court: (1) the effect of the action on the administration of the bankruptcy estate; (2) the extent to which issues of state law predominate; (3) the difficulty of applicable state law; (4) comity; (5) the relatedness or

1 remoteness of the action to the bankruptcy case; (6) the existence of a right to jury trial; and (7)
2 prejudice to the party involuntarily removed from state court. Williams v. Shell Oil Co., 169 B.R. 684,
3 692-693 (S.D. Cal.1994) (citations omitted). According to a Bankruptcy Appellate Panel decision, the
4 standard under which remand decisions are made “is an unusually broad grant of authority.” McCarthy
5 v. Prince (In re McCarthy), 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999).

6 The first factor the Court will consider is the effect of the action on the administration of the
7 bankruptcy estate. This case recently converted from Chapter 11 to Chapter 7. Mission will no longer
8 be attempting to reorganize; instead, a trustee has been appointed whose function is to collect, liquidate
9 and distribute the assets of this estate. Mission as an entity is no longer interested in the outcome of a
10 judicial interpretation of § 1371, or the meaning of the Physician Agreements. The trustee seeks only to
11 liquidate the estate as expeditiously as possible.

12 Furthermore, Mission is no longer a party to this lawsuit. This litigation is now a dispute between
13 two non-debtors, a fact that weighs heavily in favor of remand. See McCarthy, 230 B.R. at 418 (“[t]o
14 the extent [causes of action] are asserted against a non-debtor party, jurisdiction is more attenuated”).
15 The results of the proceeding will have little to no effect on the administration of this bankruptcy estate.
16 The resources of the bankruptcy court should not be consumed by a dispute to which the estate is not
17 a party.

18 Health Net contends that this action is inextricably entwined with the bankruptcy case and
19 therefore must be heard by this Court. It first argues that because some of MCMS’s members have filed
20 proofs of claim for the same debts described in the state court action, “there is essentially no difference
21 between the bankruptcy matter and this lawsuit.”

22 While it is true that Mission’s trustee will be required to raise and resolve objections to claims,
23 it is an oversimplification to state that this resolution must take place in the bankruptcy court. Proofs of
24 claim are often filed for claims that are disputed, and after relief from the automatic stay is obtained, that
25 dispute resolution process may go forward outside the bankruptcy court. See Smith v. Tricare
26 Rehabilitation Systems, Inc. (In re Tricare Rehabilitation Systems, Inc.), 181 B.R. 569, 573 (Bankr. N.D.
27 Ala. 1994) (relief from automatic stay granted to allow breach of contract claim to go forward against
28 debtor “rather than requiring the plaintiff to proceed solely by proof of claim in the bankruptcy

proceeding”). Although the state court suit had proceeded much further in Tricare than in the instant proceeding, the principle is the same. Furthermore, the Tricare court found that the Chapter 7 trustee would not be prejudiced by allowing the suit to continue. “[I]f the trustee contests [plaintiff’s] right to recover from the bankruptcy estate, then he can do it now, as part of the state court suit, just as easily as he can at some future time in this Court.” Id. at 577-578 (footnote omitted). See also Fed. R. Bankr. P. 3002(c)(3) (contemplating continuation of state court litigation while a bankruptcy case is pending, and makes allowance for the filing of a proof of claim when a claim “becomes allowable as a result of a judgment”).

Health Net next asserts that any liability it may have is dependant on Mission’s liability for breach of the physician agreements. These agreements were entered into between Mission and its subcontractor physicians, so Health Net argues that interpretation of the agreements should be accomplished by Mission’s bankruptcy judge.

Again, the Court need not use its resources to resolve this question because it has no effect on the administration of this estate. This dispute is between the physicians and Health Net - while former Mission employees may be called as witnesses if parol evidence is appropriate, there is no reason why the court administering the bankruptcy case should interpret a prepetition contract.

Health Net further argues that because its claim cannot be valued until this proceeding is resolved, the matter belongs in bankruptcy court. However, as stated above, the dispute resolution process need not occur in bankruptcy court. Although the court must estimate unliquidated claims, it need not do so unless waiting for a final resolution would unduly delay administration of the case. In re Bellucci, 119 B.R. 763 (Bankr. E.D. Cal. 1990). Health Net also fears that these claims would be subject to the decisions of two different courts if the lawsuit is remanded. This fear is unfounded. The Monterey County Court can adjudicate the claims against Health Net while this Court determines the claims against Mission and the timing of the distribution of its assets. Neither court will operate in a vacuum; to the extent relevant decisions are rendered, each court may take judicial notice of actions by the other.

Any determination made by this Court regarding the earmarked capitation payments Health Net has made to Mission during the bankruptcy case may be similarly resolved. If this Court is required to consider the issues of how much of Mission’s debt to MCMS’s members has been paid and whether

1 Mission appropriately applied these funds, it can do so in a separate proceeding. The amount owed by
2 Mission is a separate question from whether Health Net has any liability.

3 Another argument raised by Health Net is that all other health plans involved with Mission are
4 already before this Court. This fact is irrelevant to the Court's decision as to whether this lawsuit, unique
5 to Health Net, should proceed in bankruptcy court.

6 The second and third factors also support remand. In this lawsuit, state law issues not only
7 predominate but are the only issues raised. This Court would be required to address common law issues
8 of breach of contract, agency and quantum meruit. Furthermore, two of these counts require the
9 interpretation of a novel issue of state law. When there is a question of first impression of state law, it
10 is appropriate for a federal court to step aside so that the state court may resolve that question. See
11 Ullrich v. Wyeth-Ayerst Laboratories, Inc., 1996 WL 231031, *2 (N.D. Cal.) (since the case involved
12 "important and unique issues of state law and present[ed] an opportunity to develop state law . . . these
13 matters are best resolved in state court").

14 Although the predominance of state law issues is not dispositive, the total absence of any
15 bankruptcy or even federal questions weighs heavily in favor of remanding the lawsuit back to Monterey
16 County Court. Fidelity National Title Ins. Co. v. Franklin (In re Franklin), 179 B.R. 913, 927 (Bankr.
17 E.D. Cal. 1995) ("Respect for state courts on questions of state law is also pertinent. This litigation is
18 predominantly a collection of California law issues that the California courts, a fortiori, are well-equipped
19 to resolve.").

20 Furthermore, "[w]here a suit is not based in federal law and is only tangentially related to a
21 bankruptcy, it is appropriate, for reasons of comity and pragmatism, to remand the case to the more
22 experienced state forum." Bay Area Material Handling v. Broach (In re Bay Area Material Handling),
23 1995 WL 747954, *9 (N.D. Cal.). There is a complete absence of bankruptcy issues in the instant
24 litigation. The interpretation of the Physician Agreements and the question of Health Net's liability, if
25 any, does not belong in bankruptcy court. Mission is no longer a defendant, and the remaining issues can
26 be resolved by a state court, which is, "by definition, fully competent to resolve disputes governed by
27 state law." McCarthy at 418. This is true even though the Monterey County litigation is still in its initial
28 stage.

1 Plaintiff has requested a jury trial, a factor that also weighs in favor of remand. Finally, MCMS
2 was involuntarily removed from the Monterey County Superior Court. Yet MCMS, all of its members,
3 and most of the witnesses are located in Monterey County. Clearly, the Monterey County Superior Court
4 is the more convenient forum for all parties.

5 The question before this Court is whether equitable grounds exist to remand this litigation. This
6 case has been converted to Chapter 7, and Mission will no longer have an ongoing relationship with
7 MCMS or Health Net. A trustee has been appointed to liquidate the estate and distribute its assets to
8 creditors expeditiously. More importantly, Mission is no longer a party to the lawsuit. Based on the
9 burden to this estate, the dominance of state law issues, comity, plaintiff's request for a jury and the
10 convenience of the parties, the Court finds that equitable grounds to remand exist and that remand is
11 appropriate.

12 Abstention

13 MCMS additionally contends that this Court should abstain from hearing this matter under 28
14 U.S.C. § 1334(c). One treatise notes that "[a] controversy exists regarding whether abstention has any
15 role to play in dealing with removed civil proceedings or whether the entire field is occupied by section
16 1452(b), which deals with the remand of removed cases." 1 Collier on Bankruptcy ¶ 3.05[3] (15th ed.
17 rev. 1998).

18 In the Ninth Circuit, however, there is no controversy. The Circuit has clearly stated that
19 "[a]bstention can exist only where there is a parallel proceeding in state court." Security Farms v.
20 International Brotherhood, 124 F.3d 999, 1009 (9th Cir. 1997). The Security Farms panel held that the
21 abstention provisions were inapplicable where there is no pending state action. Once a state proceeding
22 has been removed to federal court, nothing is pending in state court. Therefore, if the federal court
23 abstained from the removed action, "nothing would happen because there is only one lawsuit." Security
24 Farms, 124 F.3d at 1010, n.10, quoting In re Duval County Ranch Co., 167 B.R. 848, 849 (Bankr. S.D.
25 Tex. 1994).

26 Therefore, the only appropriate remedy for a party who seeks to have a state court adjudicate an
27 action rather than the federal court to which it was removed is a motion to remand. See Greiner v.
28 Columbia Gas Transmission Corp., 41 F. Supp. 2d 625, 627 n.4 (S.D.W. Va. 1999); KSJ Development

1 Co. of Louisiana v. Lambert, 223 B.R. 677, 679 (E.D. La. 1998). Although Williams v. Shell Oil stated
2 that “[t]he majority position is that mandatory abstention is applicable to removed cases,” 169 B.R. at
3 690, the subsequent Circuit pronouncement on this issue is controlling. This Court will not consider the
4 question of abstention since the abstention provisions only apply when “there is a related proceeding that
5 either permits abstention in the interest of comity, section 1334(c)(1), or that, by legislative mandate,
6 requires it, section 1334(c)(2).” Security Farms, 124 F.3d at 1010.

7
8 **CONCLUSION**

9 Good cause appearing, IT IS HEREBY ORDERED that the Court will not consider the question
10 of abstention but finds that remand is appropriate and remands this proceeding to the Monterey County
11 Superior Court.

12
13
14 DATED: _____

UNITED STATES BANKRUPTCY JUDGE